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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/677,900 | 10/02/2003 | Dennis W. Crabtree | 50049 | 9672 |
| 22929 | 7590 | 09/18/2006 | EXAMINER | |
| SUE Z. SHAPER, P.C. 1800 WEST LOOP SOUTH SUITE 1450 HOUSTON, TX 77027 | | | NGUYEN, DINH Q | |
| | | ART UNIT | | PAPER NUMBER |
| | | | | 3752 |

DATE MAILED: 09/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|----------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/677,900 | CRABTREE ET AL. |
| | Examiner Dinh Q. Nguyen | Art Unit 3752 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 June 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-4 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim12 of copending Application No. 11/292,776. Although the conflicting claims are not identical, they are not patentably distinct from each other because of common subject matter, as follows:

Claim1 of the instant application cites a self-metering automatic fire fighting nozzle having a variable opening associated with the additive passageway, which are fully disclosed in claim 12 of the '776 application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-8, 10-12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peck et al. (U.S. Patent No. 5,678,766) in view of Lindsay (U.S. Patent No. 3,647,002).

Peck et al. discloses a self-metering industrial scale fire fighting nozzle comprising: an additive passageway 56, a fire-fighting liquid conduit 12 with a variable discharging orifice 30, and means 60/66/70 for variable occluding the additive passageway (see figure 2). Peck et al. does not teach the automatic nozzle. However, Lindsay discloses a self-metering pressure regulating fire fighting nozzle 85 with a proportioner 11 comprising: an additive passageway 33 in fluid communication with a fire fighting liquid conduit 83, a discharge orifice 17/23 varies in size with the supply pressure, structural elements 33/35/37/41/19 defining a variable opening associated with the additive passageway 33 that is automatically varied in response to variation in sizes of the discharge orifice, or a valve 33/35/37/41/19 associated with the additive passageway 33 that is automatically varied in response to variation in sizes of the discharge orifice, and a ratio selector 77 with at least two settings (see figure). Therefore, it would have been obvious to one having ordinary skill in the art to have

provided the device of Peck with an automatic nozzle as suggested by Lindsay. Doing so would provide an effective fire-fighting nozzle (see Lindsay's column 1, lines 35+).

5. Claims 1-8, 10-12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindsay (U.S. Patent No. 3,647,002) in view of Peck et al. (U.S. Patent No. 5,678,766).

Lindsay discloses a self-metering pressure regulating fire fighting nozzle 85 comprising: a proportioner 11, an additive passageway 33 in fluid communication with a fire fighting liquid conduit 83, a discharge orifice 17/23 varies in size with the supply pressure, structural elements 33/35/37/41/19 defining a variable opening associated with the additive passageway 33 that is automatically varied in response to variation in sizes of the discharge orifice, or a valve 33/35/37/41/19 associated with the additive passageway 33 that is automatically varied in response to variation in sizes of the discharge orifice, and a ratio selector 77 with at least two settings (see figure). Lindsay nozzle does not have the proportioner located within the nozzle. However, Peck et al. discloses a self-metering industrial scale fire fighting nozzle 12 comprising: a proportioner 40 having an additive passageway 56, a fire-fighting liquid conduit 12 with a variable discharging orifice 30, and means 60/66/70 for variable occluding the additive passageway (see figure 2), the proportioner 40 located within the nozzle 12. Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Lindsay with the proportioner located within the nozzle as suggested by Peck et al. Doing so would provide an effective fire-fighting nozzle (see Lindsay's column 1, lines 35+).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peck et al. in view of Lindsay or Lindsay in view of Peck et al. as applied to claims 1-8, 10-12, and 13 above, and further in view of Steingass (U.S. Patent No. 5,312,048).

Peck et al. in view of Lindsay or Lindsay in view of Peck et al. teach all the limitations of the claims except for a visible indicator of flow rate. However, Steingass discloses a fire-fighting nozzle with a visible indicator of flow rate 18 (see figure 1). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Lindsay and Peck et al. with a flow rate visible indicator as suggested by Steingass et al. Doing so would provide a way to monitoring flow rates.

Response to Arguments

7. Applicant's arguments filed 6/27/06 have been fully considered but they are not persuasive.

8. Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q. Nguyen whose telephone number is 571-272-4907. The examiner can normally be reached on Monday-Thursday 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Dinh Q Nguyen
Primary Examiner
Art Unit 3752

dqn